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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE:

**MAR 24 2015**

OFFICE: TEXAS SERVICE CENTER

FILE:

IN RE:

Applicant:

APPLICATION:

Application to Register Permanent Resident or Adjust Status Pursuant to Section 245(a) of the Immigration and Nationality Act, 8 U.S.C. § 1255(a)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you.

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status, Form I-485, was filed under section 245(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(a), on January 21, 2005. The applicant sought permanent resident status derivatively through her husband, [REDACTED] who was the beneficiary of an employment-based immigrant petition for an alien worker, Form I-140. The I-140 petition was approved, and [REDACTED] became a legal permanent resident on July 19, 2007. However, no action was taken by U.S. Citizenship and Immigration Services (USCIS) on the applicant's Form I-485. [REDACTED] was subsequently naturalized as a United States citizen on May 15, 2013.

On February 13, 2014, the Director, Texas Service Center (Director), issued a decision which recommended the denial of the applicant's Form I-485 and certified the decision to the Chief, Administrative Appeals Office (AAO), for review pursuant to 8 C.F.R. § 103.4(a). This regulation provides that district directors and other specified officials in U.S. Citizenship and Immigration Services (USCIS) may certify their decisions to the appropriate appellate authority . . . when the case involves an unusually complex or novel issue of law or fact.” In the decision the Director stated that, under applicable regulations, once the applicant's spouse became a naturalized U.S. citizen she could no longer derive status under his approved Form I-140 petition and was therefore ineligible to receive an immigrant visa under that preference category. Since the applicant was no longer considered a derivative on her husband's employment-based petition, the Director concluded that her application for permanent resident status must be denied.<sup>1</sup> The Director certified the case to the AAO for review, noting that the Form I-485 presented a novel issue which was stated by the Director as follows: “whether a derivative spouse is eligible to adjust status to that of a permanent resident as a following to join applicant after the parent<sup>2</sup> has become a naturalized citizen of the United States.”

On April 11, 2014, a petition for alien relative, Form I-130, was filed by [REDACTED] on behalf of his wife under section 201(b) of the Act. On the same date a new Form I-485 was filed by the applicant, stating that she was seeking permanent resident status because an immigrant petition giving her an immediately available immigrant visa number as the spouse of a U.S. citizen had been approved. The I-130 petition and the new I-485 application were both approved by USCIS on July 25, 2014.

Thus, the applicant acquired permanent resident status on July 25, 2014. As a result, the certification

<sup>1</sup> See section 245(a) of the Act (the status of alien may be adjusted to lawful permanent resident if an application is filed, the applicant is visa eligible and admissible to the United States, and an immigrant visa is immediately available); section 203(d) of the Act (a spouse of child is entitled to the same status if accompanying or following to join the spouse or parent); 9 FAM 40.1, Note 7.1 (describing the scope of the term “following to join” in section 203(d) of the Act); 9 FAM 40.1, Notes 7.2-4 (a “following to join” derivative alien must immigrate to the United States before the principal alien naturalizes, otherwise the newly naturalized principal must file an immediate relative petition).

<sup>2</sup> The word “parent” appears to be a mistake here. It seems more likely that “spouse” is the word the Director meant to use.

of her initial I-485 application to the AAO with a recommendation of denial has become moot.<sup>3</sup> Accordingly, the certification will be dismissed.

**ORDER:** The certification is dismissed as moot.

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<sup>3</sup> Were the certification not moot, the Director's recommendation would be correct because an applicant cannot adjust status to lawful permanent resident when the principal alien has already obtained U.S. citizenship.